IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC.CIVIL APPLICATION No 1051 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT THRO' EXECUTIVE ENGINEER

Versus

K M PATEL AND COMPANY

Appearance:

Mr.Mankad, Assistant GOVERNMENT PLEADER,
for the Petitioner.

MR GT DAYANI for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 11/12/2002

ORAL JUDGEMENT

The State of Gujarat is the applicant of this Miscellaneous Civil Application. The applicant-State has filed a civil suit, being Civil Suit No.5466 of 1989,

which is pending in the City Civil Court at Ahmedabad. The said suit is filed for the purpose of recovery of certain amount towards damages and other charges. The said suit has been filed against the present opponent, Messrs. K.M. Patel & Company. Subsequently, the opponent herein has also filed a suit, being Special Civil Suit No.114 of 1995 (old No.443 of 1989). The said suit has been filed by the opponent against the State of Gujarat, which arises out of the same contract, which is the subject matter of dispute in the suit filed by the applicant in the City Civil Court. Under these circumstances, the State has filed for transfer of Special Civil Suit No.114 of 1995 from the Court of Civil Judge (Senior Division), Gandhinagar, to the City Civil Court at Ahmedabad, so that both the suits can be heard together.

I have heard the learned Advocates, who are appearing for the respective parties. Mr.Dayani, learned Advocate appearing for the opponent-Company, submitted that evidence has started in the suit filed by his client, which is pending before the Court of Civil Judge (Senior Division), Gandhinagar. He, therefore, submitted that in case the suit filed by the opponent is transferred to the City Civil Court, Ahmedabad, evidence may be recorded in the said suit and the City Civil Court may proceed with both the suits.

Considering the facts and circumstances of the case and considering the fact that the State has filed the suit at an earlier point of time, which is pending in the City Civil Court, the suit pending in the Court of Civil Judge (Senior Division), Gandhinagar, is ordered to be transferred to the City Civil Court, Ahmedabad. Accordingly, Special Civil Suit No.114 of 1995 (old No.443 of 1989), pending before the Civil Judge (Senior Division), Gandhinagar, is ordered to be transferred to the City Civil Court, Ahmedabad and, thereafter, the same is to be heard with Civil Suit No.5466 of 1989. The City Civil Court may thereafter proceed with both the suits in accordance with law, and Special Civil Suit No.114 of 1995 pending before the Court of Civil Judge (Senior Division), Gandhinagar, which is to be tried at the City Civil Court, Ahmedabad, may be continued from the stage from which it is pending, as Mr.Dayani has submitted that evidence of some of the witnesses has already started in the civil suit, which is pending in the Court of Civil Judge (Senior Division), Gandhinagar.

This Miscellaneous Civil Application is accordingly allowed. Rule is made absolute. No costs.

11th December, 2002 (P.B. Majmudar, J.)

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(apj)